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the same holding-company system with such holding company) to take such action as the Commission shall find necessary in order that such holding company shall cease to be a holding company with respect to each of its subsidiary companies which itself has a subsidiary company which is a holding company. Except for the purpose of fairly and equitably distributing voting power among the security holders of such company, nothing in this paragraph shall authorize the Commission to require any change in the corporate structure or existence of any company which is not a holding company, or of any company whose principal business is that of a public-utility company.

* * * * * * *

(e) In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company, may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of section 18, to enforce and carry out the terms and provisions of such plan. If, upon any such application. the court, after notice and opportunity for hearing, shall approve such plan as fair

and equitable, and as appropriate to effectuate the provisions of this section, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed."

* * * * * * *

"Sec. 18. * * * (f) Whenever it shall appear to the Commission that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title, or of any rule, regulation, or order thereunder, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any Territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices and to enforce compliance with this title or any rule, regulation, or order thereunder, and upon a proper showing a permanent or temporary injunction or decree or restraining order shall be granted without bond."

* * * * * * *

"Sec. 24. (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the United States court of appeals within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying

that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code as amended (U.S.C., title 28, secs. 346 and 347)."

ORDER

UNITED STATES CIRCUIT COURT OF APPEALS
EIGHTH CIRCUIT

Nos. 12130 to 12136. May Term, 1943.

Missouri Pacific Railroad Company, Debtor, et al.,
Appellants,

v.

John W. Stedman, et al., as a Protective Committee for Holders of Missouri Pacific Railroad Company First and Refunding Mortgage 5% Gold Bonds, et al.,
Appellees.

Appeals from the District Court of the United States for the Eastern District of Missouri.

The matter of the above entitled appeals having come on for further consideration on this day and the appellants and appellees appearing by counsel before the Court, and it being represented that, in view of changed conditions, and the decisions of the Supreme Court under date of March 15, 1943, in the cases involving the reorganization of the Western Pacific and the Chicago, Milwaukee, St. Paul & Pacific Railroad Companies, all or substantially all creditors and stockholders including the Debtor, parties to these appeals, are in agreement that the matter of the Plan of Reorganization should be referred back to the Interstate Commerce Commission,

It is Ordered that these appeals be remanded to the District Court for the purpose of holding the hearing on confirmation of the Plan of Reorganization, and if the District Court be so advised, for the purpose of referring the matter of said Plan of Reorganization back to the Interstate Commerce Commission for further consideration.

And it is further Ordered that if the District Court shall confirm the said Plan of Reorganization, or shall make an order or orders denying any motion or motions

to refer the said Plan of Reorganization back to the Interstate Commerce Commission for further consideration, or if the District Court shall either approve or confirm any Plan of Reorganization which may subsequently be approved by the Interstate Commerce Commission and certified to the District Court, and any party or parties to these appeals shall appeal from any such order or orders of the District Court, then the record on appeal filed herein on December 20, 1941, shall be deemed to be and shall constitute a part of the record on appeal from any such order or orders of the District Court without being reprinted, refiled or recertified.

And it is further Ordered that the costs of these appeals, so far as not already paid, shall be paid by the Trustee of the Debtor.

May 8, 1943.

ORDER

UNITED STATES CIRCUIT COURT OF APPEALS
EIGHTH CIRCUIT

Nos. 13367, 13368, 13369, 13371, 13372 and 13373.

September Term, 1947.

Edmund Wright, et al.,

Appellants,

v.

Group of Institutional Investors, et al.,

Appellees.

Appeals from the District Court of the United States for the Eastern District of Missouri.

The above entitled appeals having come on for further consideration on this 9th day of September, A. D. 1947, before the Court at the Federal Courtroom in the City of St. Paul, Minnesota, and it appearing that all of the appellants and likewise all of the appellees in these appeals

who have filed briefs urge that the plan for reorganization involved herein should be referred back to the Interstate Commerce Commission, and it further appearing that in addition to the briefs filed on behalf of the appellants and on behalf of the appellees, the Interstate Commerce Commission has, pursuant to the suggestion of this Court that it state its views with respect to the issues raised by these appeals, filed a brief in which said Commission suggests that certain problems arising out of the substantial changes in conditions since the approval of said plan require its further review by the Interstate Commerce Commission; and this Court having heard counsel for the parties and having duly considered the same and being of the view that because of the substantial changed conditions which were not anticipated by the Commission but which have become apparent since the order approving said plan of reorganization was entered, that the order of the District Court approving said plan should be vacated and set aside and said plan should be returned to the District Court with directions to the District Court to return the plan to the Interstate Commerce Commission to take such further evidence and make such further recommendations as to it shall appear proper;

IT IS THEREFORE ORDERED that said order of the District Court, entered on January 22, 1946, approving said plan of reorganization (No. 2604-B) be, and the same hereby is vacated and set aside and that said cause be and it hereby is remanded to the District Court with directions to return the plan to the Interstate Commerce Commission for its further investigation, consideration and recommendation.

IT IS FURTHER ORDERED that the costs of these appeals so far as not already paid shall be paid by the Trustee of the debtors.

Dated at St. Paul, Minnesota, this 9th day of September, A. D. 1947.

DISTRICT COURT OF THE UNITED STATES
District of Maine
(Southern Division)

In the Matter of AMERICAN & FOREIGN POWER COMPANY INC. ELECTRIC BOND AND SHARE COMPANY	Order Civil Action No. 490

This Court having by Order dated and entered herein October 11, 1948 approved and directed the carrying out of the terms and provisions of the Amended Plan for the reorganization of American & Foreign Power Company, Inc., pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935; and

The Securities and Exchange Commission having filed herein a motion, upon the affidavit annexed thereto, for the entry of an order vacating said Order of October 11, 1948 and directing that the proceedings herein be remanded to the Securities and Exchange Commission for such further action as may be appropriate;

The Court having held a hearing on said motion after appropriate notice, all participants in this proceeding having been given an opportunity to be heard, and the Court being fully advised in the premises; and

The Court finding that the retirement of the outstanding 5% Gold Debentures of American & Foreign Power Company, Inc., cannot be effected at the present time on terms reasonably within the framework of the Amended Plan,

IT IS ORDERED that

(1) the Order of this Court entered and dated October 11, 1948 approving the Amended Plan for the reorganization of American & Foreign Power Company, Inc., under Section 11(e) of the Public Utility Holding Company Act of 1935 be, and hereby is, vacated;

(2) the proceedings herein be, and hereby are, remanded to the Securities and Exchange Commission for such further action as may be appropriate; and

(3) this Court reserves jurisdiction to entertain such supplemental or substitute application as may hereafter be made by the Commission to enforce and carry out the present Amended Plan as it may hereafter be modified or any different plan for the reorganization of American & Foreign Power Company, Inc. pursuant to Section 11(e) of the Public Utility Holding Company Act of 1935.

By The Court

/s/ John D. Clifford, Jr.
United States District Judge.

January 4, 1949

United States District Court
District of New Jersey

In the Matter of	
New York, Susquehanna and Western Railroad Company, *Debtor*	Bankruptcy No. 26,175

Opinion (Filed June 7, 1950.)

Smith, *District Judge:*

This proceeding has for its object the reorganization of a railroad corporation, hereinafter identified as the Debtor, under Section 77 of the Bankruptcy Act, 11 U. S. C. A. 205. The plan of reorganization, heretofore approved by the Interstate Commerce Commission and certified to the Court, is now before the Court for approval, hearings thereon having been had pursuant to and in accordance with the provisions of subdivision (e) of the

said section. It is our considered opinion that approval of the plan, or disapproval, should be held in abeyance pending reconsideration by the Commission.

We have carefully reviewed the entire record made before the Commission. It appears therefrom that the initial hearing on the proposed plan of reorganization was concluded on February 26, 1943, and thereafter on July 19, 1944, the Commission filed an Order approving a plan embodied therein; this order was supported by the usual Report. The several interests and the Trustee of the Debtor filed petitions for modification of the plan and were heard thereon. Thereafter on March 5, 1945, the Commission, after further consideration, modified the plan and filed an Order approving the plan as modified; this order was supported by the usual report. It is this plan which is now before the Court.

The hearing on the plan under Subdivision (e) of Section 77 of the Act was necessarily delayed until May 10, 1949. The delay was occasioned primarily by complex problems which required solution before final approval of the plan, to wit, the tax dispute with the State of New Jersey, which has been settled, and the dispute with the State of New Jersey, which has been settled, and the dispute with the New Jersey Junction Railroad Company and the New York Central Railroad Company, which has likewise been settled. The problems incident to the latter dispute were eliminated on January 3, 1950 upon the approval by the Court of a contract to which the Debtor's Trustee, the New Jersey Junction Railroad Company and the New York Central Railroad Company were parties. It should be noted that the elimination of these problems has prompted the withdrawal of the only objections to the plan, except, of course, those of Miss Edith Merritt.

It appears from the record made before the Commission that several of the essential features of the plan, to wit, capital structure, charges, allocation of securities, etc., were predicated primarily on "an estimated income ac-

count" which reflected "a prospective normal year." The estimated income account contained estimates and forecasts as to operating revenueg, operating expenses, and net income available for interest. (See original Report of November 18, 1943, at page 42, *et seq.*). These estimates and forecasts were supported by the opinions of the Debtor's Trustee, a competent witness. The opinions of the Debtor's trustee were corroborated, at least in great part, by the expert testimony of one H. Everett Woodruff, a competent witness produced by the proponents of the plan.

We see no reason to discuss the evidence except to observe that it is our opinion that it was the best and only evidence then (1943) available. There is now available additional statistical data pertinent to the succeeding years 1943 to 1950, inclusive. This data and other additional evidence has been presented at the hearings conducted by the Court pursuant to and in accordance with Subdivision (e). It is our opinion that this data and additional evidence should be considered and appraised not only by the Court but also by the Commission to the end that each may conscientiously discharge its function.

It was stated by the Supreme Court in the case of *Ecker* v. *Western R. Corp.*, 318 U. S. 448, at page 475:

> "These reorganizations may be attained only through properly coordinated action between the Commission and the court." It was further stated at page 468:
>
> "These reorganizations require something more than contests between adversary interests to produce plans which are fair and in the public interest. When the public interest, as distinguished from private, bulks large in the problem, the solution is largely a function of the legislative and administrative agencies of government with their facilities and experience in investigating all aspects of the problem and apprais-

ing the general interest. Congress outlined the course reorganization is to follow. It established standards for administration and *placed in the hands of the Commission the primary responsibility for the development of a suitable plan.* When examined to learn the purpose of its enactment, Sec. 77 manifests the intention of Congress *to place reorganization under the leadership of the Commission,* subject to a degree of participation by the Court.

"It is clear from the discussions and the statute itself that there was recognition by everyone of the advantages of utilizing the facilities of the Commission for investigation into the many-sided problems of transportation service, finance and public interest involved in even minor railroad reorganizations and utilizing the Commission's experience in these fields for the appraisals of values and the development of a plan of reorganization, fair to the public, creditors and stockholders. The resulting legislation was *an attempted balance between the power of the Commission and that of the court"* (Emphasis by the Court).

It is important to bear in mind that this Court is urged to approve a plan of reorganization which was developed by the Commission more than five years ago, a plan based upon the best evidence then available. The lapse of time would not require the remand of the plan to the Commission for reconsideration and further report if it were not for several factors, to wit, the change of economic conditions, the substantial increase in operating expenses, the decrease in the net available for bond interest (apparent in 1946, 1947, 1949 and 1950) and other relevant factors, which in the opinion of the Court should be considered before the plan is finally approved. It must be conceded that the Commission is in a better position than the Court to evaluate these factors and their effect, if any, on the plan.

We are fully aware of the undesirability of further delay in these proceedings, but we are equally aware of the broad responsibility which the Act places upon the Court. The additional evidence and statistical data, which covers the actual operations since 1942, has thus far been considered only by the Court. It is our opinion that this evidence and statistical data, and such additional evidence as the Commission shall require, should be considered by the Commission if we are to have the "coordinated action" which the Act requires.

There is further reason which prompts our decision to remand the proceedings to the Commission for reconsideration of the plan and further report. We fully recognize the competence and the experience of the Commission in the field of railroad reorganization, and we can avail ourselves of this competence and experience only by a remand and request for a supplemental report. A further modification of the plan may not be necessary, but if a modification is necessary, the Commission has the jurisdiction to make it.

The several interests have filed a joint petition praying that certain corrections in the plan be made. These petitions may be referred to the Commission for consideration. This course may not be necessary but under the circumstances we deem it advisable.

The Attorney for the Trustee is requested to prepare and submit to the Court a proper order.

ORDER.

The Interstate Commerce Commission, having made its Supplemental Report and Order dated March 5, 1945, therein setting forth and approving a Plan of Reorganization for the above named Debtor (hereinafter referred to as the "Plan"), and a certified copy of said Supplemental Report and Order having been filed with the Clerk of this Court; and all parties in interest having been given due

opportunity to file their objections in writing to the Plan and their claims for equitable treatment; and the Interstate Commerce Commission, having made its Report dated November 8, 1948, with respect to applications of the Debtor's Trustee for authority to abandon certain operations of the Debtor, its Trustee, New Jersey Junction Railroad Company and The New York Central Railroad Company, and for a finding that such abandonments would be consistent with the reorganization requirements of the Debtor, and a certified copy of said Report having been filed with the clerk of this Court; and

New York Life Insurance Company, Henry K. Norton, as Trustee of the Debtor, United States Trust Company of New York, as Trustee under the Debtor's Terminal Mortgage, Central Hanover Bank and Trust Company, as Trustee under the First Mortgage of Midland Railroad Company of New Jersey and as Trustee under the First Mortgage of Paterson Extension Railroad Company, Commercial Trust Company of New Jersey, as Substituted Trustee under the Debtor's First Refunding Mortgage, the Protective Committee for Holders of the Debtor's First Mortgage Refunding Bonds, the Protective Committee for Holders of the Debtor's General Mortgage Bonds, and the Group of Holders of First Mortgage Bonds of Paterson Extension Railroad Company having filed herein their joint petition dated March 31, 1949 (hereinafter referred to as the "Joint Petition") requesting certain corrections of the Plan and the approval of the Plan as corrected; and

A hearing duly noticed pursuant to Order of this Court having been held before this Court on May 10, 1949 with respect to the Plan and all objections thereto and claims for equitable treatment theretofore filed except the objections theretofore filed by the Debtors Trustee and by New York Life Insurance Company; and the Interstate Commerce Commission having made a further Report

dated October 3, 1949 with respect to the aforesaid applications of the Debtor's Trustee for authority to abandon certain operations of the Debtor, its Trustee, New Jersey Junction Railroad Company and The New York Central Railroad Company, and for a finding that such abandonments would be consistent with the reorganization requirements of the Debtor; and a certified copy of said further Report dated October 3, 1949 having been filed with the Clerk of this Court; and

The Debtor's Trustee, New Jersey Junction Railroad Company and the New York Central Railroad Company having entered into a contract with respect to the operations which were the subject of the above mentioned application of the Debtor's Trustee for abandonments; and said contract having been approved by this Court by Order No. 417, dated January 3, 1950 and having been filed with the Interstate Commerce Commission pursuant to its Report dated October 3, 1949; and the Interstate Commerce Commission having made its Report and Order dated January 11, 1950, denying the aforesaid applications of the Debtor's Trustee for abandonments and for a finding that such abandonments would be consistent with the reorganization requirements of the Debtor, and a certified copy of said Report and Order having been filed with the Clerk of this Court; and

The aforesaid objections to the Plan heretofore filed by the Debtor's Trustee and by New York Life Insurance Company, respectively, having been withdrawn by stipulation by leave of Court; and the parties to the above-mentioned Joint Petition having filed herein their supplemental petition dated January 12, 1950 (hereinafter referred to as the "Supplemental Joint Petition") for an Order correcting the Plan and approving the Plan as corrected; and

All parties in interest having been given due opportunity to file their answers to the aforesaid Joint Petition and Supplemental Joint Petition and a hearing

thereon duly noticed pursuant to Order of this Court having been held on January 23, 1950; and the Court, having heard the testimony given at the aforesaid hearings and having considered the answer dated January 21, 1950 filed herein by Edith A. Merritt to the aforesaid Joint Petition and Supplemental Joint Petition, and having considered all the evidence, including the exhibits, and having considered the transcript of proceedings certified to the Court by the Interstate Commerce Commission, the arguments of counsel and the entire record in these proceedings, and being fully advised in the premises; and the Judge of this Court, having filed herein on June 7, 1950, his opinion stating his conclusions with respect to the Plan and the reasons therefor; and it appearing to this Court, for the reasons set forth in the aforesaid opinion, that approval of the Plan, or disapproval, should be held in abeyance pending reconsideration of the Plan by the Interstate Commerce Commission, and that the proceedings should be referred back to the Interstate Commerce Commission for such reconsideration of the Plan and further report;

IT IS THEREFORE ORDERED:

That the proceedings are referred back to the Interstate Commerce Commission, pursuant to subsection (e) of Section 77 of the Bankruptcy Act and this Court's opinion dated June 7, 1950, for reconsideration of the Plan and further report.

The Clerk of this Court shall forthwith transmit to the Interstate Commerce Commission (1) a copy of all evidence received by this Court at the aforesaid hearings on the Plan and objections thereto and on the above-mentioned Joint Petition and Supplemental Joint Petition, and of the arguments at said hearings of parties in interest thereon; (2) a copy of the aforesaid Joint Petition and Supplemental Joint Petition; (3) the aforesaid answer to

the Joint Petition and to the Supplemental Joint Petition, filed herein by Edith A. Merritt; (4) a copy of the aforesaid opinion filed herein on June 7, 1950; and (5) a certified copy of this Order.

WILLIAM F. SMITH,
U. S. D. J.

Dated: June 12, 1950.